

CONTINGENT EXTENSION PETITION

If this communication is filed after the shortened statutory time period has elapsed and no separate Petition is enclosed, the Director of Patents and Trademarks is petitioned, under 37 C.F.R. § 1.136 (a), to extend the time for filing a response to the outstanding Office Action, or any future communication filed in this application by this firm, by the number of months which will avoid abandonment under 37 C.F.R. § 1.135. The fee under 37 C.F.R. § 1.17 should be charged to our Deposit Account Number 04-1073 under Order Number E3331.0514/P514.

REMARKS/ARGUMENT

An RCE was filed in the above-captioned application on July 11, 2003. Claims 1-33 and 35-46 are pending. Claims 1, 15, 17, 18, 19, 30, 31, 39 and 40 have been amended to rectify obvious clerical and grammatical errors. These amendments do not narrow the scope of the claims.¹ Claim 37 has been amended, and new Claims 48-50 have been added, to more clearly define the invention.

Applicant thanks the Examiner for the courtesy of a personal interview conducted on July 10, 2003 with Examiner Wasylchak and Examiner Kazimi. During the interview, independent claims 1, 15, 26, 31, 35 and 37 were discussed in light of United States patent number 6,343,278 to Jain et al. (Jain). Applicant requests that this communication be considered in light of that interview and of the Request for Continued Examination filed on July 11, 2003.

¹ It should be noted that the change of the phrase "are either executed together or rejected" to "are either executed together or rejected together" does not change the scope of this limitation. Because the original language used the either/or terminology, the claim inherently required that the orders be rejected together. This amendment merely states explicitly that which was inherent in the original wording of the claims. This change is redundant, and for clarification purposes only.

Claims 37-46

Claims 37-46 stand rejected under 35 U.S.C. § 102(e) over Jain. Among the limitations of these claims which are neither disclosed nor suggested in the art of record are the requirement that all of said linked orders "*are either executed together or rejected together*," (emphasis added).

While Jain discloses a system for linking multiple orders together (for the purpose of having a total order limit ,e.g., \$20,000,000.00, for the group of linked orders), the matching engine of Jain does not execute or reject the individual orders as a group as required by claim 37. Quite to the contrary, Jain executes the linked orders one by one. That is, any single order of a linked group of orders from one trader can be matched with any single order of either an individual or linked group of orders from another trader. During the above noted interview, the examiners did not disagree with this proposition. Rather they noted that it was possible to more broadly construe the claim as only requiring that the trading system be *capable of accepting all orders* and therefore as anticipated by Jain.

Claim 37 cannot be read this broadly. To do so would render the term "either" in claim 37, line 11 meaningless and destroy the integrity of the claim. The term "either" is grammatically inseparable from the word "or" on the same line and has no meaning in its absence. In the construction of a patent claim, every word is significant. Therefore, no rejection should be based on a claim construction that renders a claim term meaningless. Consequently, the phrase "either executed together or rejected" should be read as an integral unit which requires that the grouped orders be either accepted together or rejected together. The claims have been amended to explicitly state this fact. However, this change merely states explicitly that which was inherent in the original claim language and therefore does not further narrow the claim.

Claims 38-46 each depend, directly or indirectly, from claim 37 and incorporate every limitation thereof. These claims recite additional limitations which, in combination with the limitations of claim 37, are neither disclosed nor suggested in the art of record. Accordingly, these claims are also believed to be in condition for allowance.

Claims 1-33

Claims 1-33 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over United States Patent Number 5,375,055 to Togher et al. (Togher) in view of Jain. The examiner's rejection on this ground is respectfully traversed.

Claims 1-15

The Office Action acknowledges that Togher does not teach the claim 1 limitations that "all of said linked orders are either executed together or rejected" To overcome this deficiency in Togher, the examiner relies on Jain as showing this feature. However, as noted above, Jain does not show this feature of the invention. Accordingly, even if one were to accept the propriety of combining the Togher and Jain references, the combination would still not teach or suggest the claimed invention. Therefore, the rejection of claim 1 under 35 U.S.C. § 103(a) over Togher in view of Jain should be withdrawn.

Claims 2 through 14 depend from claim 1 and include all of the limitations found therein. These claims further set forth additional limitations which, in combination with the limitations of claim 1, are neither disclosed nor suggested in the art of record. Accordingly, these claims are also believed to be directed towards patentable subject matter.

Claims 15-25

Like claim 1, independent claim 15 include the limitation that "all of said linked orders are either executed together or rejected together". For the reasons set forth with respect to claim 1, claim 15 is believed to be in condition for allowance.

Claims 16 through 25 depend from claim 15 and include all of the limitations found therein. These claims further set forth additional limitations which, in combination with the limitations of claim 15, are neither disclosed nor suggested in the art of record. Accordingly, these claims are also believed to be directed towards patentable subject matter.

Claims 26-30:

Among the limitations of claim 26 which are neither disclosed nor suggested in the art of record are "means for rejecting a joint execution order if less than all the plurality of linked orders are executable." The examiner asserts that this feature is shown in Jain and

cites, at page 12 of the Office Action, several sections of Jain which allegedly support the examiner's contention. However, a careful reading of these sections (and, indeed, all of Jain) shows that while Jain will cancel a joint order when the value of that order falls below the minimal notional amount, it does not disclose rejecting a *joint execution order* if less than all of the linked orders are executable. A joint execution order is not the order placed on the system by the maker of a trader. Rather it is the order placed on the system by the taker of the trader (the second party accepting the order of the first party). There is no disclosure in Jain of such a *joint execution order* being rejected if less than all of the linked orders are executable.

Claims 27-30 depend from claim 26 and include all of the limitations contained therein. These claims recite additional limitations which, in combination with the limitations of claim 26, are neither disclosed nor suggested in the art of record. Accordingly, these claims are also believed to be in condition for allowance.

Claims 31-34:

Independent claim 31 requires that the "all of said linked orders are either executed together or rejected together". For the reasons set forth above with respect to claim 1, these claims are believed to be in condition for allowance.

Claims 16 through 25 depend from claim 31 and include all of the limitations found therein. These claims further set forth additional limitations which, in combination with the limitations of claim 31, are neither disclosed nor suggested in the art of record. Accordingly, these claims are also believed to be directed towards patentable subject matter.

Claims 35-36:

Claims 35 and 36 stand rejected under 35 U.S.C. § 103(a) over Jain in view of United States Patent Number 6,247,000 to Hawkins (Hawkins). Applicant respectfully traverses rejection.

Claims 35 recites "[a]n anonymous trading system... comprising... at least one broker terminal... wherein the broker terminal... performs only one of: executes both the first and second order, and rejects both the first and second order." The Office Action acknowledges that Jain does not teach the claim 35 limitation of "wherein the broker

terminal... performs only one of: executes both the first and second order, and rejects both the first and second order." The combination of the Jain and Hawkins references is thus proposed in the Office Action in an attempt to remedy this deficiency.

The Office Action does not make out a prima facie case of obviousness. To establish a prima facie case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art and not based on applicant's disclosure.

The Office Action does not identify, in the prior art, a motivation for the proposed combination of the Jain and Hawkins. Nor does it establish that such a combination could be made with a reasonable expectation of success. Finally, even taken together, Jain and Hawkins do not teach or suggest every limitation of the claimed invention.

The Hawkins references relates to a method system for confirmation and settlement for financial transactions matching. Hawkins indicates that "'Price type' is used to specify if the price is a discount or premium amount or another type of price." Column 26, lines 54-61. According to Hawkins, "'Price Limit' specifies the currency, price limit and code identifying the type of order. The field includes an ISO currency code, a price and a price limit code. 'Price Limit Codes' are codes used to buy or sell orders, and include the following: AON--all or none..." The mere recitation of the words "all or none" does not, however, teach or suggest the invention as claimed.

Indeed, nothing in Jain and Hawkins, taken alone or in combination, is sufficient to teach or suggest all claim 35 limitations including, "wherein the broker terminal... performs only one of: executes both the first and second order, and rejects both the first and second order." Accordingly, no prima facie case for the obviousness of claim 35 has been made out, and rejection under 103(a) of claim 35, and of claim 36 which depends therefrom, should be withdrawn.

Claims 37-46:

Like claim 1, independent claim 37 includes the limitation that "all of said linked orders are either executed together or rejected together". For the reasons set forth with respect to claim 1, claim 37 is believed to be in condition for allowance.

Claims 38 through 46 depend from claim 37 and include all of the limitations found therein. These claims further set forth additional limitations which, in combination with the limitations of claim 37, are neither disclosed nor suggested in the art of record. Accordingly, these claims are also believed to be directed towards patentable subject matter.

In view of the above, each of the presently pending claims in this application is believed to be in immediate condition for allowance. According, the Examiner is respectfully requested to pass this application to issue.

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Respectfully submitted,

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